

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 EASTERN DISTRICT OF PENNSYLVANIA

3 - - -
4 VALUE DRUG COMPANY, on) CIVIL DIVISION
5 behalf of itself and)
all others similarly) NO. 2:21-CV-03500-MAK
6 situated,)

7 Plaintiffs,)

8 -vs-)

9 TAKEDA PHARMACEUTICALS)
U.S.A., INC., et al.,)
10 Defendants.)
- - -

11 Zoom Hearing

12 Before the Honorable Thomas I. Vanaskie

13 Special Discovery Master

14 August 10, 2022

15 1:00 p.m. Eastern time
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1 PROCEEDINGS

2 JUDGE VANASKIE: Let's hear
3 from Plaintiffs first. It's their motion.

4 MR. KOHN: Sure, Your Honor.
5 Peter Kohn for the Plaintiff.

6 Since the time we filed our motion,
7 Your Honor, I can happily report that we've
8 gotten one, two, three, four of these
9 depositions scheduled. And we've also gotten
10 objections to two of the 30(b)(6) notices,
11 which suggest that neither Takeda or Par
12 intends to produce anybody in response to those
13 notices, so we'll be filing a motion to compel
14 after initiating, which I think happened today,
15 the meet and confer process.

16 We know that the Defendants wish to
17 put a ceiling on the number of total
18 depositions. We think that because of the --
19 and we're willing to discuss that, but we think
20 that an iterative process is more -- more
21 practical.

22 The recollections of the various
23 witnesses may satisfy us that we don't need to
24 take certain depositions that have been with
25 class certification where we were able to take

1 no depositions after noticing four of them
2 because of the documents that were produced
3 after those notices went out.

4 But if the ceiling is to be
5 required, we would -- would point out to the
6 Court that in cases within this District and
7 within this Circuit, we can't find a single
8 like case where fewer than ten depositions per
9 defendant was -- was provided for by the Court.

10 And I can go through those cases.
11 They're all familiar to counsel here because
12 Kirkland and Dechert and Morgan Lewis are the
13 attorneys for the Defendants in all of those
14 cases, so none of them will be a surprise. And
15 some of them had as many as 30 depositions per
16 defendant.

17 JUDGE VANASKIE: It may be
18 that you're -- you'll get well in excess of the
19 ten deposition-per-side limit. Hopefully you
20 can negotiate that without having to require a
21 court ruling.

22 But the problem I'm having is that
23 you're asking for an order that directs the
24 parties to meet and confer to schedule what I
25 think are now 22 depositions. There's some

1 confusion as to whether there's four 30(b)(6)
2 notices or six 30(b)(6) notices.

3 In any event, what's -- they are to
4 meet and confer with you and -- and agree to
5 what?

6 If they don't want to -- if they
7 don't want to agree to more than ten
8 depositions, that's what you're limited to
9 until -- and unless there's a court order or
10 there's an agreement among the parties.

11 MR. KOHN: Yes, Your Honor.

12 And that's why we think that -- that the
13 Defendants in refusing to schedule -- at least
14 taking the position in the meet and confer that
15 they refuse to schedule any depositions until a
16 limit was agreed upon, that that was not a
17 well-taken position. That we should schedule
18 the ten depositions, and to the extent that --
19 that the Defendants don't wish to allow us to
20 take any more, at that time, we will move
21 before Your Honor and show good cause as to why
22 the others are necessary.

23 So we're up to five depositions
24 scheduled now, and -- and once we reach the
25 ten, if the Defendants will not give us any

1 more, we will come before Your Honor. But
2 they've taken the position, although they've
3 softened it since -- since we filed our motion
4 and schedule, you know, for -- but they took
5 the position in the meet and confer that they
6 wouldn't even talk to us about scheduling
7 depositions until we agreed on a ceiling, which
8 deprives us of our ten.

9 MS. CHAPMAN: Your Honor, can
10 I briefly respond regarding the -- unless you
11 have additional questions for Plaintiffs? I
12 don't want to interrupt.

13 JUDGE VANASKIE: Let me hear
14 from your side now.

15 MS. CHAPMAN: Your Honor,
16 Julia Chapman speaking for Par the meet and
17 confer. I want to be clear about the position
18 that Defendants took. Defendants would not
19 agree to proceed with scheduling the more than
20 20 depositions that Plaintiffs had sought
21 without agreeing to an increase in the cap of
22 federal rules.

23 Plaintiffs were not seeking to
24 schedule ten depositions. Plaintiffs were
25 seeking to schedule all 20 depositions, and

1 Defendants took the position that we not
2 unilaterally increase the cap over the federal
3 rule.

4 And that's another important point.
5 It's not the Defendants that are seeking to
6 impose the cap. It's the rules that have very
7 clearly impose a cap.

8 And there's two alternatives. If
9 Plaintiffs want more than ten, as Your Honor
10 has contemplated, Plaintiffs could move and
11 seek to increase it or Plaintiffs could
12 negotiate in good faith regarding what
13 the total cap on depositions would be.

14 And since I believe March of this
15 year, Defendants have been asking Plaintiffs to
16 engage on that exact question. The question of
17 if you are going to, in fact, seek to take more
18 than ten depositions, we need the talk about it
19 and what number should that be.

20 And I think today was the first
21 time, at least speaking for Par, that we had
22 heard the Plaintiffs were willing to engage in
23 any agreement or try to reach any agreement
24 with respect to a cap.

25 JUDGE VANASKIE: Okay.

1 MR. FEE: And, Your Honor,
2 Brendan Fee for Takeda.

3 If I may, and just to underscore, at
4 least from Takeda's perspective what
5 Ms. Chapman is saying, it's clearly not the
6 case that Takeda was not willing to schedule
7 any depositions until a cap was reached.

8 In fact, to the contrary. We
9 provided deposition dates for several Takeda
10 witnesses at Plaintiff's request, three, George
11 Kokkines, Jason Maxwell, and Nilesh Bhutada,
12 and as well as scheduling and preparing a
13 30(b)(6) witness on certification.

14 And so, you know, we are prepared to
15 move forward with the scheduling of
16 depositions, but not 22 depositions because
17 the -- that is not permitted by the rule.
18 We're prepared to negotiate and discuss that
19 position, and if what Plaintiff's position is
20 is that they will take ten and then come before
21 Your Honor, then maybe we have something to
22 talk about. But that's the first that we heard
23 of that, at least to my knowledge.

24 The other thing I would add is I
25 think Mr. Kohn mentioned that 30(b)(6)

1 objections were served as to the merits notice
2 that -- that the Plaintiffs have recently
3 issued. And that is true as to Takeda, and we
4 are scheduled to meet and confer with the
5 Plaintiffs on the topics in that notice.

6 But I don't know what the outcome of
7 that meet and confer is going to be, and I
8 certainly wouldn't want to prejudge the concept
9 that we are refusing to produce a witness
10 entirely in response to that notice.

11 We need to have that discussion with
12 the Plaintiffs, and hopefully -- hopefully
13 we'll be able to reach some compromise whereby
14 some of the topics may be narrowed, and perhaps
15 we'll be in a position to produce a witness on
16 some of those topics. But I don't think we're
17 there yet, so I just wanted to highlight that
18 for Your Honor.

19 JUDGE VANASKIE: Mr. Kohn,
20 what's inappropriate in having ten depositions
21 get scheduled, meet and confer, get ten
22 depositions scheduled, and then go from there?

23 MR. KOHN: I fully agree, Your
24 Honor, and I'm pleased to hear the softening of
25 the Plaintiffs' positions. Your Honor can read

1 that -- that Ms. Chapman wrote to my colleague,
2 Brad Demuth, that it's Par's position that the
3 parties need to agree on the total number of
4 depositions allowed per side before deposition
5 scheduling proceeds in this case.

6 I'm hearing a softening from
7 that position which is what caused -- that
8 position caused this motion to be filed. But
9 we agree with Your Honor.

10 Let's -- let's schedule ten, and
11 then we will -- my prediction is we'll meet and
12 confer, but we'll end up before Your Honor
13 justifying the rest. But we absolutely agree.

14 JUDGE VANASKIE: Okay.

15 Ms. Chapman?

16 MS. CHAPMAN: May I respond
17 briefly, Your Honor?

18 JUDGE VANASKIE: Yeah.

19 MS. CHAPMAN: Thank you.

20 So we articulated that position in
21 the specific context of Plaintiffs noticing
22 22 depositions, more than -- a dozen more than
23 the Federal rules contemplated, and is
24 demanding that we proceed with scheduling all
25 of those depositions. Par was refusing to do

1 that because Plaintiffs were acting outside the
2 context of the federal rules.

3 Speaking for Par, it's Plaintiffs'
4 position that they'll now notice ten
5 depositions and then make their showing of the
6 particularized need, what we will need from
7 Plaintiffs is the ten depositions that they
8 intend to seek now. We're still in a place
9 where they have, I believe, 22 deposition
10 notices outstanding.

11 So we don't want to be in a position
12 of a guessing game. We'll need from Plaintiffs
13 the ten depositions that they're -- that
14 they're going to take.

15 But my codefendants may have a
16 different position.

17 MR. FEE: That's certainly the
18 case for Takeda, Your Honor, and it's
19 particularly important for Takeda because the
20 vast majority of the witnesses that the
21 Plaintiffs have identified as potential
22 deponents are former employees, and I think we
23 can all agree that it's neither fair nor
24 appropriate for us to be in a position of
25 reaching out and -- and posing burdens and

1 concerns on third-party witnesses about the
2 prospect of being deposed when it may very well
3 be that they're not going to be deposed.

4 And so I think what we need is a
5 finite list of ten at this point from the
6 Plaintiffs so that we can go out, get those
7 depositions scheduled, and then if they make
8 the showing that they're required to make under
9 the rules for more, then we can go back out
10 and -- and do what we need to do.

11 That's what we would request on
12 behalf of Takeda, Your Honor.

13 JUDGE VANASKIE: Okay.

14 Mr. Kohn?

15 MR. BENDHEIM: To be clear,
16 Takeda Defendants -- sorry, Your Honor. I just
17 want to make clear the Teva Defendants and
18 Amulet agree with those positions.

19 JUDGE VANASKIE: Okay. Thank
20 you for that.

21 Mr. Kohn?

22 MR. KOHN: Your Honor, if --
23 if it will make it easier for the Defendants
24 without withdrawing any of our notices,
25 we'll -- you know, we'll highlight ten that --

1 at least now it'll just be five because they've
2 scheduled five of them already.

3 We'll highlight five more and then
4 we can take it from there. And to the extent
5 one of our five they feel shouldn't be
6 scheduled at all, if we need to feed them
7 additional ones, you know, we will.

8 But I would hope that Your Honor
9 would -- would direct the Defendants, if not
10 order the Defendants, to accept the five
11 additional ones that we will put before them
12 and simply schedule them.

13 MS. CHAPMAN: Your Honor?

14 JUDGE VANASKIE: Go ahead.

15 MS. CHAPMAN: From Par's
16 perspective -- thank you, Your Honor.

17 The appropriate course of action is,
18 in fact, the drawing of the notice of
19 depositions to be faithful to rules that
20 require Plaintiffs can only notice ten.

21 It's important from our perspective,
22 and I think the entire reason there's a ten cap
23 is that we not be in a place of ambiguity where
24 Plaintiffs can just pick and choose and then
25 change out deponents as they see fit.

1 There's a reason there's meant to be
2 some structure with this process, and so we ask
3 that Defendants -- or Plaintiffs notice the ten
4 depositions that they intend to proceed with.

5 JUDGE VANASKIE: What about
6 the five that have been agreed to thus far?

7 MS. CHAPMAN: So I can't speak
8 to those, Your Honor, because I had not
9 scheduled those on behalf of my client. So
10 Mr. Bendheim will have to speak to that.

11 MR. BENDHEIM: I believe --
12 I'm not sure if all five are from Amulet and
13 Teva, but I believe at least three or four of
14 them are. I'm seeing that Mr. Kohn said three.

15 With respect to those three, I think
16 it'll be appropriate -- we agree with
17 Ms. Chapman. It would be appropriate for them
18 to be renoticed. We have no intention of
19 playing games.

20 If these are the ones that
21 the district determines to renotice, we'll hold
22 these dates. If -- If Mr. Kohn, you know,
23 tells us, "We'll only renotice these three,"
24 We'll hold the dates. We'll keep the ones we
25 held available.

1 But we agree that there's a purpose
2 for the structure of the rules. This isn't
3 just a technicality. It is the way that this
4 discovery can move forward in an organized way
5 that isn't a, sort of, "got you, I'm switching
6 it out," and we think that's the appropriate
7 way to do it.

8 JUDGE VANASKIE: Mr. Kohn,
9 should we jump through that hoop, or...

10 MR. KOHN: I can jump through
11 any hoop that's put before me, Your Honor. The
12 one hoop that I am concerned about though is
13 that Judge Kearney has expected the Plaintiffs
14 to be filing a status memorandum identifying
15 the confirmed deposition dates and locations
16 for all fact witnesses. And that was a
17 deadline back in April. Judge Kearney then
18 softened it to be for class certification
19 purposes.

20 JUDGE VANASKIE: Right.

21 MR. KOHN: The Court will
22 remember that we were able to obviate the need
23 for all the depositions from the -- from the
24 document production that our earlier deposition
25 notices provoked.

1 But I did promise on May 18th -- I
2 did promise Judge Kearney that we will confer
3 with Defendants on the scheduling of
4 depositions for nonclass certification issues,
5 which is now, and file a status memorandum
6 listing those names, date, and locations.

7 So we'll jump through all hoops, but
8 I know that we made a commitment to
9 Judge Kearney, and I -- I'd like to be in a
10 position to meet it.

11 JUDGE VANASKIE: Well, let's
12 move forward by having you renotice the five
13 that -- for which you already have agreed-upon
14 dates. So any of those five 30(b)(6)
15 depositions.

16 MR. KOHN: No, Your Honor.
17 They're all 30(b)(1).

18 JUDGE VANASKIE: Okay.

19 And then Plaintiffs choose another
20 five, whether 30(b)(6) deponents or 30(b)(1)
21 deponents and get those scheduled. And then
22 you meet and confer for the purpose of
23 identifying other witnesses whose depositions
24 should be taken in this matter.

25 I have no doubt that you will be

1 taking more than ten depositions on the
2 Plaintiffs' side in this matter. But I don't
3 know what that number is and cannot decide that
4 number in a vacuum, and we'll need to make the
5 showing that the rules require that
6 particularized showing that's required to
7 exceed the limit.

8 But in a case of this complexity, it
9 is almost a certainty that there'll be more
10 than ten -- ten depositions taken by the
11 Plaintiffs. I think everybody understands
12 that, but we can't decide that in a vacuum, and
13 you're going to have to move forward, get these
14 ten depositions scheduled as promptly as
15 possible so the case can continue to move
16 forward.

17 MR. KOHN: We will do so, Your
18 Honor, and hopefully the Defendants will
19 cooperate with early dates so that -- so
20 that we can meet our functional discovery
21 cut-off of November 17 when our opening expert
22 reports are due on the matter.

23 JUDGE VANASKIE: Well, if you
24 feel like you're running into foot-dragging
25 with respect to getting the depositions

1 scheduled, well, then reach out, and we'll see
2 what we can do to move the matter forward more
3 promptly.

4 MR. KOHN: Plaintiffs
5 appreciate Your Honor's advice. Thank you.

6 JUDGE VANASKIE: Okay.

7 Mr. Fee, did you want to say
8 something?

9 MR. FEE: We did, Your Honor,
10 and we certainly appreciate Your Honor's advice
11 as well, and we have no intention of dragging
12 our feet.

13 I did want to just make one point:
14 The fact discovery deadline in this case is
15 December 22nd, so while there's an expert
16 deadline before that, the reality is that the
17 fact that discovery cut-off is December 22nd.
18 Judge Kearney set that schedule with an
19 understanding depositions would be taking
20 place, most likely, up until that date. So I
21 just wanted to be clear about that.

22 JUDGE VANASKIE: All right.
23 Thank you for clarifying that.

24 Anything else?

25 MS. CHAPMAN: No, Your Honor.

1 MR. FEE: No.

2 JUDGE VANASKIE: I wanted to
3 ask you all. A few motions have been filed in
4 the last couple of days, and I do like to
5 conduct these Zoom sessions with respect to the
6 motions.

7 Is it appropriate to hear all the
8 motions in one session, and if so, what day
9 next week would be appropriate?

10 MR. KOHN: Your Honor, for the
11 Plaintiffs, who is the movant on all three
12 motions, Brad Demuth is handling the motion as
13 to Watson and Teva; Dave Rochelson is handling
14 one of the Par motions; and Amanda Hass is
15 handling the other Par motion. I'm sure that
16 they will make themselves available at any time
17 next week that Your Honor would like.

18 And I believe, personally, that all
19 three can be handled simultaneously in a single
20 hearing session and that the Court might
21 actually benefit from structuring it that way
22 because the Court may find that there are some
23 overlaps in the themes of the privilege
24 challenges being made.

25 JUDGE VANASKIE: All right.

1 MS. CHAPMAN: Your Honor,
2 speaking for Par, we're perfectly comfortable
3 handling the two motions that have been filed
4 again Par in a single session.

5 MR. BENDHEIM: The same is
6 true for Teva; we're happy to join on.

7 JUDGE VANASKIE: Okay.

8 MR. FEE: And at present, Your
9 Honor, there's -- there's no motions pending
10 against Takeda.

11 JUDGE VANASKIE: All right.

12 So I think what you can expect is
13 that I'll issue an order -- when -- when are
14 the responses to the motions due? Are they due
15 today or --

16 MS. CHAPMAN: The response to
17 one of the motions that Plaintiffs filed
18 against Par is due today. The response to the
19 second of those motions is due tomorrow.

20 MR. BENDHEIM: The Teva one is
21 due today as well.

22 JUDGE VANASKIE: Okay. So I
23 expect -- I'm going to look at my calendar, but
24 I expect that I'll be looking to conduct the
25 Zoom session Monday or Tuesday of next week.

1 All right?

2 MS. CHAPMAN: Thank you, Your
3 Honor.

4 JUDGE VANASKIE: Okay.

5 Now, what I wanted to do with
6 respect to this motion is I'm going to -- I'd
7 like to indicate that we conducted an argument,
8 and the parties agreed on a way to move
9 forward, and essentially, dismiss the motion as
10 moot.

11 Does the Plaintiff have any
12 objection to that?

13 MR. KOHN: No, Your Honor. We
14 would not challenge Your Honor's ruling,
15 whether it's denied without prejudice or
16 mooted. We would not object to Your Honor's
17 ruling that way.

18 JUDGE VANASKIE: All right.

19 Ms. Chapman?

20 MS. CHAPMAN: I have -- I have
21 no objection, Your Honor.

22 JUDGE VANASKIE: Okay.

23 Mr. Fee?

24 MR. FEE: Likewise,
25 Your Honor, no objection.

1 JUDGE VANASKIE: And,
2 Mr. Bendheim?

3 MR. BENDHEIM: Same. No
4 objection. Thank you, Your Honor.

5 JUDGE VANASKIE: All right.
6 I'll issue something this afternoon then on
7 that. It'll be a recommended order, I guess,
8 but that's how I'll handle it.

9 All right. Anything else?

10 MS. CHAPMAN: No, Your Honor.
11 Thank you.

12 JUDGE VANASKIE: Thank you all
13 very much.

14 MR. FEE: Thank you.

15 JUDGE VANASKIE: Thanks.

16 MR. FEE: Have a good day.

17 JUDGE VANASKIE: Thanks.

18 - - -

19 (Thereupon, the hearing was
20 concluded at 1:20 p.m.)

21 - - -

22

23

24

25

1 CERTIFICATE

2 I hereby certify that the
3 proceedings and evidence are contained fully
4 and accurately in the stenographic notes taken
5 by me on the hearing of the within cause, and
6 that this is a correct transcript of the same.

7
8 /S/ Alyssa A. Repsik

9 =====

10 Alyssa A. Repsik, Court Reporter
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